



**Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: UI-2021-001193  
(PA/50902/2021); IA/01495/2021**

**THE IMMIGRATION ACTS**

**Heard at George House,  
Edinburgh  
On the 19 October 2022**

**Decision & Reasons Promulgated  
On the 14 November 2022**

**Before**

**UT JUDGE MACLEMAN**

**Between**

**I A**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

*For the Appellant: Mr I Halliday, Advocate, instructed by Drummond Miller,  
Solicitors*

*For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer*

**DETERMINATION AND REASONS**

1. FtT Judge Farrelly dismissed the appellant's appeal by a decision dated 15 August 2021.
2. The appellant sought permission to appeal to the UT on grounds asserting (1) failure to consider the risk to the appellant as an unmarried mother and (2) error regarding the reasonability of expecting the appellant's son,

a UK citizen, to relocate with her to Tunisia. The FtT refused permission. The application was renewed to the UT.

3. On 2 February 2022 UT Judge Blum granted permission:

The appellant's protection claim was advanced on the basis that she was a Christian convert and on the basis that she would face treatment amounting to persecution as an unmarried mother ... The FtT judge dismissed the protection appeal so far as it related to the claimed conversion (and there is no appeal against this aspect of the decision), but the judge does not appear to have engaged with the protection claim based on the appellant being an unmarried mother. It is arguable that the judge failed to make material findings of fact in respect of this separate basis.

The evidence before the judge in support of the appellant's claim to face persecution as an unmarried mother, identified in paragraph 18 of the skeleton argument, appears, on its face, to be weak, and the UT will need to determine whether any failure by the judge could have led to a materially different outcome.

Ground 2 is unarguable. The judge was demonstrably aware that the appellant's child was a British citizen [58], and that the child was not yet 3 years old, and, for the reasons given at [58] to [60], the judge was unarguably entitled to find that it would not be unreasonable to expect the child to relocate to Tunisia.

DIRECTIONS: Pursuant to *EH* (PTA: limited grounds; Cart JR) Bangladesh [2021] UKUT 00117 (IAC), and having regard to the limited grant of permission ... the scope of the 'error of law' hearing is limited to Ground 1 ...

4. On 31 March 2022 the SSHD responded to the grant of permission, submitting that the decision did engage sufficiently with background information on the position of unmarried mothers in Tunisia.
5. On 11 October 2022 Mr Halliday's skeleton argument was lodged, identifying the evidence to which the appellant and respondent referred in the FtT, and specifying the FtT's failure to resolve their conflicting positions, and to make findings on the risk of persecution by society in general. A remit is sought to determine those issues "and whether removal would breach article 8 ECHR".
6. Having considered those written submissions, Mr Mullen did not resist a finding that the FtT erred in law.
7. That concession was fairly and correctly made. The necessary consideration of the background evidence cannot be read into the decision in the way hopefully suggested by the response to the grant of permission. The skeleton argument for the appellant at [2 - 6] concisely and accurately identifies what is missing. It also acknowledges at [11] that other findings of the FtT fall to be preserved.
8. Mr Mullen did not argue that the outcome must inevitably have been the same. He accepted that a remit was the appropriate outcome. Pragmatically, as circumstances will have moved on, he also accepted that the scope of reconsideration should not exclude article 8.
9. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the decision of the FtT is set aside, but only to the extent set out above. The

case is remitted to the FtT for further hearing, which may include the leading of additional background evidence and updating of evidence personal to the appellant and her son, and to substitute a fresh decision. Further procedure is to be before a different FtT Judge (the course preferred by both parties).

10. The FtT made an anonymity order, although for no stated reason. It is not apparent that there is justification for departure from the general rule of open justice. However, as the matter was not addressed in the UT, anonymity is maintained herein.

H Macleman

19 October 2022  
UT Judge Macleman

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#### **NOTIFICATION OF APPEAL RIGHTS**

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A **"working day"** means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email.